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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,460	04/29/2002	Juergen Lorenz	H 4136 PCT/US	4081
23377	7590	04/05/2006	EXAMINER	
WOODCOCK WASHBURN LLP ONE LIBERTY PLACE, 46TH FLOOR 1650 MARKET STREET PHILADELPHIA, PA 19103			RAZA, SAIRA B	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/009,460	Applicant(s) LORENZ ET AL.	
	Examiner Saira Raza	Art Unit 1711	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-18 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-18 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                              |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                             | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/20/2006</u> | 6) <input type="checkbox"/> Other: _____                                                |

### DETAILED ACTION

The rejections have been altered to reflect the amended claims.

#### *Claim Rejections - 35 USC § 102*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 14-18 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Datcoop.
3. The reference discloses thermoplastic compositions comprising either rubber waste or leather fibers with a tenside surfactant (abstract). Examples show 15-50% by weight of hide fibers mixed with the balance of an ethylene-vinyl acetate copolymer/polyethylene blend. Additives may also be included. Regarding the claims' exclusion of ionic and non-ionic surfactants (tensides), it is noted that the reference is replete with examples of illustrate embodiments containing only hide fibers and the ethylene-vinyl acetate copolymer/polyethylene blend in the absence of a tenside (p. 9 to p. 12). The reference discusses comparative examples having the same binders and fibers but not including the tenside components (p. 13 lines 8-14). Thus, the reference suggests the claimed materials.
4. Claims 14-18 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Czerwinski et al.
5. The reference teaches thixotropic compositions comprising a liquid material and leather fibers (col. 2 lines 20-22), where polyvinyl acetate and other thermoplastics are taught as liquid coating composition binders (col. 5 lines 21-35). The binders are used in amounts of 1-95% by weight, while the leather fibers are used in amounts up to about 20% by weight (col. 5 lines 36-50). The reference also teaches the claimed fibers lengths (table, col. 12).

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6. Claims 14-17, 19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergmann.

7. Bergmann discloses a plastic material having fiber fillers (abstract), where 0.01-20 parts of fiber, including animal fiber of wool, are mixed with 100 parts of plastic material (col. 5 line 61-col. 6 line 3). Wherein wool is derived from hair. The fibers have the claimed lengths (col. 4 lines 56-57), and the polymer matrices include both thermoplastic and elastomeric styrene-butadiene copolymers (col. 3 line 65-col. 4 line 10).

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwinski et al. in view of Bergmann.

10. Czerwinski applies as above, teaching styrene-butadiene elastomer materials (examples), but failing to teach thermoplastic styrene-butadiene materials. Bergmann teaches fiber-containing matrices, where thermoplastic and elastomeric styrene-butadiene materials are taught as equivalents. However, since the thermoplastic materials would be processible by thermoforming and other thermal molding methods, it is the examiner's position that it would have been prima facie obvious to use thermoplastic styrene-butadiene materials in the compositions of Czerwinski's invention to provide heat-formable compositions.

11. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwinski et al. in view of Kuchler et al.

12. Czerwinski applies as above, teaching thermoplastic compositions useful as coatings and films but failing to teach the claimed manufacture process including the treatment, dewatering, and

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drying steps. K  chler teaches aqueous plastic dispersions of vinyl polymers and filler, where the filler comprises fibrous material (abstract). Preferred fibers include leather fibers (col. 3 lines 20-36). The reference teaches a process of adding fibers to a plastic dispersion, treating the dispersion with aluminum sulfate in an additive amount of 5-20% by weight, removing the water, and drying the mixture to form a sheet (col. 3 line 52-col. 4 line 13). This process is used to form sheets of vibration-damping properties. Thus, it is the examiner's position that it would have been prima facie obvious to employ the methods of K  chler's invention to form materials of improved vibration damping properties.

13. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czerwinski et al. in view of Toyota.

14. Czerwinski applies as above for the making of leather products, failing to mention the use of hot-melt films to form leather laminates. Toyota teaches a method of bonding leather to a backing material via a hot-melt adhesive to form seating articles having improved mechanical strength (abstract). The molten adhesive would inherently form a film between the two outer layers. It is the examiner's position that it would have been prima facie obvious to use Toyota's article-forming method to form leather articles having improved appearance while having improved mechanical strength.

### ***Response to Arguments***

15. In response to applicant argument that the Datcoop reference requires a tenside additive, it is noted that the figure legend clearly states that the composition does not comprise tenside; additionally, the document is replete with examples of illustrative embodiments of the claimed composition without tenside.

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16. Applicant argues that Czerwinski discloses a thixotropic composition as opposed to the claimed thermoplastic composition. Both thixotropic and thermoplastic describe properties of a composition. As disclosed above, the composition of Czerwinski is identical to that claimed herein. Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, since the prior art teaches the identical chemical structures, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). The burden shifts to the applicant to show an unobvious difference. "[T]he PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product. Whether the rejection is based on 'inherency' under 35 U.S.C. 102, on 'prima facie obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted]." The burden of proof is similar to that required with respect to product-by-process claims. *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (quoting *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977)).

17. Note, that because the reference does not expressly teach or address the properties of the claimed invention, does not mean that the properties are not inherently disclosed. Disclosure of the same compound(s) inherently discloses the corresponding properties. The reference cannot possibly teach or address all of the properties, but implicitly all of the properties are present.

18. In response to applicant argument that Bergmann discloses animal fiber of wool, it is noted that wool is derived from hair; hence Bergmann anticipates the claims.

19. In response to applicant argument that Czerwinski cannot be applied as a primary reference in the obviousness analysis in view of K  chler and in view of Toyota, see above response, which states that the composition of Czerwinski is identical to the claimed composition.

***Conclusion***

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saira Raza whose telephone number is (571) 272-3553. The examiner can normally be reached on Monday-Friday from 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**James J. Seidleck**  
**Supervisory Patent Examiner**  
**Technology Center 1700**